

TO: Wetlands Task Force

FROM: Sean O. Coffey, Chair – Statutory Working Group
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DATE: March 16, 2000

**RE: Summary of Meetings of Statutory Working Group
February 24 and March 15, 2000**

This Memorandum will summarize the discussions and deliberations of the members of the Statutory Working Group during its meetings of February 24 and March 15, 2000. Each meeting commenced at 8:30 a.m. in the Director's Conference Room at DEM and lasted for approximately two hours. Based on the charge from the Task Force, the Statutory Working Group focused its discussions on a number of specific issues identified by the full Task Force. The Working Group analyzed each of these issues for (1) its impact on the wetlands regulatory program, the resource being protected and the regulated community; (2) the importance of the statutory change being proposed; and (3) whether an alternative regulatory change could be fashioned to address the issue, concern or problem.

Each of the members were aware that wetlands reform legislation initially developed by the Governor's Wetlands and ISDS Task Force originally introduced in 1996 failed passage in 1996 in each subsequent General Assembly. In general terms, the members of the Working Group felt that comprehensive statutory change based on the deliberations of the Governor's Task Force is the best resolution to many of the issues discussed. However, in light of the obstacles to legislative action, effort should be made to address many of the issues identified by the Task Force through regulatory changes, if possible, in order to show a commitment by DEM to reform and a willingness to make regulatory changes consistent with wetlands reform which would protect the resource, improve the program's performance and bring the Wetlands Program into line with the current state of the science.

In addition, at the March 15, 2000 meeting, members agreed to revisit and review the original wetlands legislation recommended to the General Assembly by the Governor's Task Force in 1996 and the most recent "acceptable" version of the legislation considered by the General Assembly in 1999 to determine whether any other issues should be addressed through legislation. The Department will distribute copies of the 1996 legislation to the members of the Working Group for their review and for discussion at the next Working Group meeting.

The following is a summary of the discussion concerning the specific issues identified by the Task Force for review by the Statutory Working Group:

1. **Increase the length of time for permit renewals/expiration.** The Task Force identified the duration of permits as an issue requiring some discussion by the Statutory Working Group. Some parties expressed concern that the current time limit for permits (one-year permit with three successive one-year renewals) is not sufficient for completion of certain major transportation or development projects. It was suggested by Sean Coffey that perhaps issuance of a draft permit for significant transportation and development projects could provide a period of time of up to two years for DOT or a major developer to complete other necessary local permitting or transportation related permitting before the aggregate four-year term of the permit would begin to run. This concept was discussed further at the March 15, 2000 meeting, and the consensus of the Group was that it could create an even more cumbersome process for the Department. As an alternative, the Group discussed proposing statutory language to eliminate all time limits in the Wetlands Act and delegating to the Director authority to prescribe time limits for permits or renewals or alternatively giving the Director authority in accordance with regulations to authorize additional time for DOT transportation projects or projects of the Economic Development Corporation. The matter was deferred until the next meeting of the Working Group for further discussion.

2. **Consider clarifying and strengthening the Declaration of Intent of the statute to include a statement that the State policy should be “no net loss of wetlands”.** The Working Group concluded that it was important to obtain a clear expression of legislative intent by the General Assembly which better reflects the value and importance of wetlands and the need for their protection in modern scientific terms. It was noted that there had been no substantial change to the Declaration of Intent since it was adopted in 1971. The Task Force members reviewed the revised Statement of Legislative Intent included in the 1996 Governor’s Task Force legislation and the 1999 version and concluded that the statutory changes with respect to legislative intent would be appropriate for inclusion in legislation and submission to the General Assembly.

3. **Address the need for a variance provision in the existing statute.** Some members of the Working Group suggested that a variance procedure might be appropriate to assure that due process requirements are met within the wetlands program. Upon further discussion, it was the consensus of the Working Group that a variance procedure would be required if the Wetlands Task Force considers adopting specific minimum standards (e.g. prohibitions, buffers setback minimums) to provide some opportunity for an applicant to demonstrate a need for relief. On the other hand, if the program continues with its current approach to evaluating the impact on wetlands on essentially an ad hoc basis, then the addition of a variance process may be avoided. It was the consensus of the Working Group that if a variance process is required, it could be created by regulation without the necessity of legislation.

4. **Evaluate the definition of jurisdictional area, including buffer zones.** The Task Force reviewed the 1999 version of the wetlands legislation which redefines the areas adjacent to the wetlands as “bordering lands” and in certain cases increases the size of bordering lands. It was noted in the discussions of the Working Group that the treatment of the “areas within 50, 100 or 200 feet” of a particular wetland type as part of the wetlands had created the

impression that the wetlands program had exceeded its authority to protect wetlands by extending the reach of the program into the bordering areas. The Group acknowledged that the bordering areas were worthy of protection and regulation based on their significance in protecting or enhancing the value of the adjacent wetlands. It was generally recommended that while it may be worth the effort to return to the General Assembly with a proposed redefinition of the bordering lands that it would be useful in the interim for DEM to segregate the "areas within" some distance from the wetlands proper and develop regulations and performance standards to assess work proposed within those areas. It was also suggested that the administrative findings section of the regulations be expanded to discuss the significance of the bordering areas in current scientific terms and that regulations be developed to establish standards for evaluating work which falls within the bordering areas adjacent to specific wetlands types.

5. **Include municipal control and oversight provisions in the Wetlands Program.** This matter was deferred for discussion until the next meeting of the Working Group.

6. **Evaluate the issue of third party access to property in order to delineate wetlands.** This issue involves the need to map portions of wetlands which may exist on property adjacent to a wetlands site which is not owned by the applicant. That issue is deferred until the next meeting for further discussion.

The next meeting of the Task Force will be April 13, 2000 at 8:30 a.m. to 10:00 a.m. in the DEM Director's Conference Room.

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